

CardioVascular Technologies, LLC  
101 Southbend Ct.  
Loveland, OH 45140

513.583.9081  
Fax: 513.583.8566

**CardioVascular Technologies, LLC**Date 6/21/97

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OCT 11 2001

**CONSULTING AGREEMENT**

Name of Consultant

Munk OstryTitle CONSULTING ENGINEERAddress 5981-7 MEADOWCREEK RD  
MILFORD OH 45156Tax Identification Number (Social Security Number) 044 56 0905Telephone Number 513 831 1227Term of Consulting Service: From 6/21/97 to 12/21/97**CardioVascular Technologies, LLC and Consultant agree:****1. Scope of Work**

Consultant will perform the consulting services for CardioVascular Technologies, LLC as described in Exhibit 1 (the "Services").

**2. Compensation**

CardioVascular Technologies, LLC will pay Consultant a consulting fee in the amount and on the terms specified in Exhibit 2. The total fee (including reimbursable travel expenses under this agreement) may not exceed two thousand dollars (\$2000.00) without the prior written approval of CardioVascular Technologies, LLC.

**3. Manner of Performance**

Consultant represents that Consultant has the requisite expertise, ability and legal right to render the Services and will perform the Services in an efficient manner. Consultant will abide by all laws, rules and regulations that apply to the performance of the Services. Each of Consultant's employees performing Services will have the expertise to perform assigned Services in an efficient manner. Consultant and employees of Consultant when on CardioVascular Technologies, LLC's premises will comply with CardioVascular Technologies, LLC's policies with respect to conduct of visitors.

**4. Confidentiality**

In the course of this agreement, it is anticipated that Consultant will learn confidential or proprietary information of CardioVascular Technologies, LLC. Consultant will keep confidential this information and any other information which Consultant may acquire with respect to CardioVascular Technologies, LLC's business, including, but not limited to, information developed by Consultant and information relating to new products, customers, pricing, know-how, processes, and practices, unless and until consents to disclosure, or unless such knowledge and information otherwise becomes generally available to the public through no

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fault of Consultant. Consultant will not disclose to others, without CardioVascular Technologies, LLC's consent, the fact that it is acting on behalf of CardioVascular Technologies, LLC and will not publish on the subject of this consulting relationship without first providing CardioVascular Technologies, LLC with the opportunity to review and offer reasonable objection to the contemplated publication. This undertaking to keep information confidential will survive the termination of this agreement. Consultant will require each of its employees performing Services to execute CardioVascular Technologies, LLC's Confidentiality Agreement, if requested by CardioVascular Technologies, LLC. At the termination of this agreement, Consultant will return to CardioVascular Technologies, LLC all drawings, specifications, manuals and other printed or reproduced material (including information stored on machine readable media) provided by CardioVascular Technologies, LLC to Consultant and all copies of such information made by Consultant or its employees.

#### **5. Conflicts of Interest**

Consultant represents that it has advised CardioVascular Technologies, LLC in writing prior to the date of signing this agreement of any relationship with third parties, including competitors of CardioVascular Technologies, LLC, which would present a conflict of interest with the Services or which would prevent Consultant from carrying out the terms of this agreement. Consultant will advise CardioVascular Technologies, LLC of any such relationships that arise during the term of this agreement. CardioVascular Technologies, LLC will then have the option to terminate this agreement without further liability to Consultant, except to pay for Services actually rendered.

#### **6. Relationships with Others**

During the term of this agreement and for one year after its termination date, neither Consultant nor its employees will perform consulting services in the specific area in which Consultant actually has consulted under this agreement for any other entity engaged in the development manufacture, distribution or sale of medical care products or services.

#### **7. Independent Contractor**

Consultant will be an independent contractor, and Consultant and any employees of Consultant performing Services will not be employees of CardioVascular Technologies, LLC. The manner in which Services are rendered by Consultant and any employees of Consultant will be within Consultant's sole control and discretion. CardioVascular Technologies, LLC will not be responsible for Consultant's acts or the acts of its employees while performing the Services whether on CardioVascular Technologies, LLC's premises or elsewhere, and Consultant and its employees will not have authority to speak for, represent, or obligate CardioVascular Technologies, LLC in any way.

#### **8. Ownership of Developments**

All written materials and other works which may be subject to copyright and all patentable and unpatentable inventions, discoveries, and ideas (including but not limited to any computer software) which are made, conceived or written by Consultant during the term of this agreement, and for 90 days after it expires, and which are based upon the Services performed by Consultant for CardioVascular Technologies, LLC ("Developments") shall become CardioVascular Technologies, LLC's property. Consultant agrees to hold all Developments confidential in accordance with paragraph 4 of this agreement.

#### **9. Disclosure and Transfer of Developments**

Consultant will disclose promptly to CardioVascular Technologies, LLC each Development and, upon CardioVascular Technologies, LLC's request and at CardioVascular Technologies, LLC's expense, Consultant will assist CardioVascular Technologies, LLC, or anyone it designates, in filing patent or copyright applications in any country in the world. Each copyrightable work, to the extent permitted by law, will be considered a work made for hire and the authorship and copyright of the work shall be in CardioVascular Technologies, LLC's name. Consultant will execute all papers and do all things which may be necessary or advisable, in the opinion of CardioVascular Technologies, LLC, to prosecute such applications and to vest in CardioVascular Technologies, LLC, or its designee, all the right, title and interest in and to the Developments. If for any reason Consultant is unable to effectuate a full assignment of any

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Development, Consultant will transfer to CardioVascular Technologies, LLC, or its designee, its transferable rights, whether they be exclusive or nonexclusive, or as a joint inventor or partial owner of the Development.

**10. Disclosures to CardioVascular Technologies, LLC**

If during the term of this agreement, Consultant discloses any copyrightable works, inventions, discoveries, or ideas to CardioVascular Technologies, LLC which were conceived or written prior to this agreement or which are not based upon the Services performed by consultant for CardioVascular Technologies, LLC under this agreement, CardioVascular Technologies, LLC will have no liability to Consultant because of its use of such works, inventions, discoveries or ideas, except liability for infringement of any valid copyright or patent now or hereafter issued thereon.

**11. Term**

The term of this agreement is as specified on the first page of this agreement, but in no event will the term of this agreement extend beyond three years from this date of this agreement.

**12. General**

No assignment by Consultant of this agreement or any sums due under it will be binding on CardioVascular Technologies, LLC without CardioVascular Technologies, LLC's prior written consent. This agreement supersedes all prior agreements and understandings between the parties respecting the subject matter of this agreement. This agreement may not be changed or terminated orally by or on behalf of either party. In the event either party breaches this agreement, the other party will have the right to terminate the agreement. In the event of the actual or threatened breach of any of the terms of paragraphs 4, 6, 8, and 9, CardioVascular Technologies, LLC will have the right to specific performance and injunctive relief. The rights granted by this paragraph are in addition to all other remedies and rights available at law or in equity. This agreement shall be construed according to the laws of Ohio for contracts made within that state.

Mark Ostry

Date: 6-21-97

Shirley Villars

For CardioVascular Technologies, LLC

Date: 6-21-97

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## Exhibit 1

## "Services"

The Consultant will use his best efforts to develop conceptual drawings, computer models, prototypes or further reduce to practice ideas relating to the use of tools and instruments for cardiovascular surgery. The specific goals for a particular project will be discussed one on one with the managing member and at a minimum weekly conferences will be used to review progress.

## Exhibit 2

CardioVascular Technologies, LLC will pay Consultant within thirty days of submission of invoices detailing the number of hours worked. CardioVascular Technologies, LLC will pay Consultant at an hourly rate of \$55.00 per hour. CardioVascular Technologies, LLC will reimburse Consultant for any reasonable expenses associated with work done for CardioVascular Technologies, LLC such as any travel expenses or extraneous required materials upon submission of expense receipts. A 1099 will be submitted to the Consultant at the end of each year.

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**ASSIGNMENT**

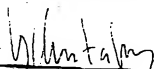
The undersigned, in connection with the formation of **CARDIOVASCULAR PARTNERS, LLC** (the "Company") and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby agree:

- (i) To assign, transfer and convey to the Company all of his right, title and interest in and to all intellectual property, including but not limited to inventions, patents, patent rights, copyrightable material, tangible and intangible research property, trade secrets and trademarks (the "Intellectual Property") now owned or hereafter developed or acquired by him relating to the development or commercialization of a device or procedure for mechanically fastening a sutureless heart valve and an artificial prosthesis (the "Product"); and
- (ii) To execute all necessary papers, and to cooperate fully with the Company to obtain, maintain or enforce for itself or its designees, patents, copyrights or other legal protection for such Intellectual Property.

The undersigned further represents and warrants that he is under no obligation to any person, entity or organization with respect to any rights in the Intellectual Property as above described that are, or reasonably could be construed to be, in conflict with this Assignment, and that he will enter into no agreement or arrangement that would create a conflict with this Assignment.

This Assignment replaces all previous agreements with the Company relating to the subject matter hereof. It may not be modified or terminated, in whole or in part, except in a writing signed by the undersigned and the Company. This Assignment and the obligations hereunder shall inure to and be binding upon the undersigned, his executors, administrators or other legal representatives, and shall inure to the benefit of the Company and its successors and assigns.

The undersigned has executed and delivered this Assignment this February day of 1996.

  
\_\_\_\_\_  
George C. Christakis, M.D.

DC01 121005

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## ASSIGNMENT

The undersigned, in connection with the formation of CARDIOVASCULAR PARTNERS, LLC (the "Company") and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby agree:

- (i) To assign, transfer and convey to the Company all of his right, title and interest in and to all intellectual property, including but not limited to inventions, patents, patent rights, copyrightable material, tangible and intangible research property, trade secrets and trademarks (the "Intellectual Property") now owned or hereafter developed or acquired by him relating to the development or commercialization of a device or procedure for mechanically fastening a sutureless heart valve and an artificial prosthesis (the "Product"); and
- (ii) To execute all necessary papers, and to cooperate fully with the Company to obtain, maintain or enforce for itself or its designee, patents, copyrights or other legal protection for such Intellectual Property.

The undersigned further represents and warrants that he is under no obligation to any person, entity or organization with respect to any rights in the Intellectual Property as above described that are, or reasonably could be construed to be, in conflict with this Assignment, and that he will enter into no agreement or arrangement that would create a conflict with this Assignment.

This Agreement replaces all previous agreements relating to the same or similar matters between the undersigned. It may not be modified or terminated, in whole or in part, except in a writing signed by the undersigned and the Company. This Assignment and the obligations hereunder shall inure to and be binding upon the undersigned, his executors, administrators or other legal representatives, and shall inure to the benefit of the Company and its successors and assigns.

The undersigned has executed and delivered this Assignment this 12 day of February, 1996.

  
Warren F. Williamson IV

DC01 131005

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OCT 11 2001

**ASSIGNMENT**

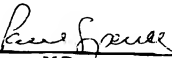
The undersigned, in connection with the formation of **CARDIOVASCULAR PARTNERS, LLC** (the "Company") and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby agree:

- (i) To assign, transfer and convey to the Company all of his right, title and interest in and to all intellectual property, including but not limited to inventions, patents, patent rights, copyrightable material, tangible and intangible research property, trade secrets and trademarks (the "Intellectual Property") now owned or hereafter developed or acquired by him relating to the development or commercialization of a device or procedure for mechanically fastening a sutureless heart valve and an artificial prosthesis (the "Product"); and
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This Assignment replaces all previous agreements with the Company relating to the subject matter hereof. It may not be modified or terminated, in whole or in part, except in a writing signed by the undersigned and the Company. This Assignment and the obligations hereunder shall inure to and be binding upon the undersigned, his executors, administrators or other legal representatives, and shall inure to the benefit of the Company and its successors and assigns.

The undersigned has executed and delivered this Assignment this 10<sup>th</sup> day of February, 1996.

  
Paul A. Spence, M.D.

**WOOD, HERRON & EVANS, LLP**

JOHN D. POFFENBERGER  
 BRUCE TITTEL  
 DONALD F. FREI  
 DAVID J. JOSEPHIC  
 A. RALPH NAVARO, JR.  
 DAVID S. STALLARD  
 J. ROBERT CHAMBERS  
 GREGORY J. LUNN  
 KURT L. GROSSMAN  
 CLEMENT H. LUKE, JR.  
 THOMAS J. BURGER  
 GREGORY F. AHRENS  
 WAYNE L. JACOBS  
 KURT A. SUMME  
 KEVIN G. ROONEY  
 KETH R. HAUPT  
 THEODORE R. REMAKLUS  
 THOMAS W. HUMPHREY  
 SCOTT A. STINEBRUNER

2700 CAREW TOWER  
 441 VINE STREET

CINCINNATI, OHIO 45202-2917

TELEPHONE: 513-241-2324

FACSIMILE: 513-421-7269

EMAIL: info@whepatent.com

PATENT, TRADEMARK, COPYRIGHT  
 AND UNFAIR COMPETITION LAW  
 AND RELATED LITIGATION

EDMUND P. WOOD 1923-1968  
 TRUMAN A. HERRON 1935-1976  
 EDWARD B. EVANS 1936-1971

JOSEPH R. JORDAN  
 C. RICHARD EBY,

DAVID E. PRITCHARD  
 DAVID H. BRINKMAN  
 J. DWIGHT POFFENBERGER, JR.  
 BEVERLY A. LYMAN, Ph.D.  
 KATHRYN E. SMITH  
 KRISTI L. DAVIDSON  
 P. ANDREW BLATT, Ph.D.  
 DAVID E. JEFFERIES  
 DAVID E. FRANKLIN  
 WILLIAM R. ALLEN, Ph.D.  
 JOHN PAUL DAVIS  
 DOUGLAS A. SCHOLER  
 FRANK M. MUNGO (KY BAR)  
 BRETT A. SCHATZ  
 ALLISON A. DAVIDSON

TECHNICAL ADVISORS  
 HENRY M. LABODA, Ph.D.  
 LARRY D. MOORE, B.S.E.E.  
 DAVID W. DORTON, M.M.E.  
 RONALD J. RICHTER, M.D.  
 G. PRABHAKAR REDDY, M.S.C.H.

website: whepatent.com  
 writer's e-mail: krooney@whepatent.com

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**GROUP 3700**

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 DATE: October 11, 2001

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RE: Serial No. 09/306,448; Filed:  
 May 6, 1999; For: Means and  
 Method of Replacing a Heart  
 Valve in a Minimally Invasive  
 Manner; Applicants: Warren  
 Williamson IV et al.; Our Ref.  
 No.: CVT-02

TO: Examiner P. Prebilio  
 Group 3738

FROM: Kevin G. Rooney

FAX NO.: 703-308-3708

TOTAL PAGES: 12  
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